

PRATT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

-----x
IN RE ADAMS GOLF, INC. Consolidated
C.A. No. 99-371 KAJ
SECURITIES LITIGATION Class Action
Jury Trial Demanded
-----x

APRIL 27, 2006
9:00 O'CLOCK A.M.

The Deposition of GREG PRATT, taken
before Ernest Kuemmel, CSR(A), Examiner, pursuant
to Rules 203, 728, 204(1) of the Court of Queen's
Bench of Alberta at the offices of Michael C.
Dunkley, Calgary, Alberta, on the 27th day of
April, A.D. 2006.

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APPEARANCES

FOR THE PLAINTIFFS:

Elizabeth W. Fox, Ms.
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, Pennsylvania 19103

and

Elizabeth A. Leland, Ms.
Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052

FOR THE DEFENDANTS:
(With the exception of the underwriters)

Michelle A. Reed, Ms. and
Laura Morlaty, Ms.
Akin Gump Strauss Hauer & Feld LLP
300 West 6th Street, Suite 2100
Austin, Texas 78701-3911

OFFICIAL COURT REPORTER:

Kim L. Morosse, CSR(A) RPR

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1 GREG PRATT, sworn, examined by Ms. Fox:

2 Q. Can you state your name for the record?

3 A. My name is Greg Pratt.

4 Q. And where do you live?

5 A. I live in Calgary, Alberta, Canada.

6 Q. When did you start with Mackenzie?

7 A. In 1994.

8 Q. What was Mackenzie?

9 A. WDC Mackenzie Distributors was a golf
10 distributor based out of Calgary.

11 Q. By the spring of 1998, what was your
12 position with Mackenzie?

13 A. I was the national sales manager.

14 Q. What were your duties as national sales
15 manager?

16 A. My duties were overseeing the sales
17 force and purchasing of some of the product within
18 the wholesale division.

19 Q. What was Mackenzie's relationship with
20 Adams Golf in 1998?

21 A. We were the exclusive Canadian
22 distributor of Adams product within the Canadian
23 market.

24 Q. What exactly did that mean?

25 A. That meant that we were the sole holder

9

1 A. To the best of my recollection, I spoke
2 with Mark Gonsalves because he was our contact, and
3 it was really just to bring it to his attention
4 because this was the beginning of the process.

5 Q. Do you remember him saying anything to
6 you?

7 A. There wasn't a great deal of concern at
8 the time.

9 Q. Who was Mark Gonsalves?

10 A. I don't remember his exact title, but he
11 was the head of their sales and marketing at Adams
12 Golf.

13 MS. FOX: This will be Exhibit
14 6.

15 EXHIBIT NO. 6 - TWO-PAGE LETTER
16 WITH ATTACHED FACSIMILE
17 TRANSMISSION SHEET, DATED APRIL 13,
18 1998, TO CHRIS BEEBE FROM GREG
19 PRATT - MCK00093 TO MCK00095

20 Q. MS. FOX: Mr. Pratt, I'm
21 showing you Exhibit 6. What is this?

22 A. This is a letter that I wrote April 13,
23 1998, to Chris Beebe, who was a recent hire at
24 Adams Golf, and he was brought in to be the
25 director of international sales. So the letter is

10

1 to introduce ourselves officially in writing and
2 also to welcome him to, as I put it, the exciting
3 world of Adams Golf, but also to bring him up to
4 speed on what had happened as far as product being
5 in Costco, which we were quite concerned about at
6 the time.

7 Q. Look at the third paragraph, starting:
8 "Our Adams accounts."

9 A. Yes.

10 MS. FOX: Off the record.
11 (DISCUSSION OFF THE RECORD)

12 Q. MS. FOX: Exhibit 6 is a
13 three-page document with a fax sheet at the bottom.
14 Back to Exhibit 6. On the third
15 paragraph, can you tell us what your account
16 customers were telling you in their calls in the
17 three weeks?

18 A. The reaction was immediate from the
19 Canadian golf market. As soon as word got around
20 that Adams Tight Lies was in Costco, and that we
21 were receiving our calls daily, our inside sales
22 group was receiving calls daily, concerned about
23 that. And obviously the main reason they were
24 concerned was that Costco, being a discount
25 retailer, was selling the product at a far less -

11

1 lower price than what we sold the product, expected
2 the product to be retailed in the market.

3 Q. Did you speak with any of these
4 customers?

5 A. Yes.

6 Q. And what kinds of things were they
7 saying to you?

8 A. Well, their concern was that this
9 product was -- which was arguably the hottest
10 product at the time in golf, could be impacted
11 seriously because they had seen this happen from
12 other manufacturers. And they wanted to know that
13 we would address the concern as quickly as
14 possible.

15 Q. Can you remember the names of any
16 accounts that called in those first three weeks?

17 A. Yes. Typically we would have got a call
18 from Nevada Bob's Calgary store, and also it would
19 have been the DiMarco Golf back in Ontario.

20 Q. And tell me about Nevada Bob's. Was
21 that just one store?

22 A. No, there was a chain of stores. So the
23 person I was speaking to was speaking on behalf of
24 the chain.

25 Q. Do you know how many stores were in that

12

1 chain?

2 A. At this time, that group represented
3 about a handful of stores in the Calgary market.

4 Q. In this document, the fifth paragraph,
5 you mentioned Callaway, Taylor Made and King. Was
6 the entire golf market involved in the gray
7 marketing problem?

8 A. No, the entire golf market wasn't --
9 hadn't been impacted, but some of the larger
10 manufacturers had been impacted, and as I stated
11 here, they had taken action.

12 And Ping, as an example, had done
13 serial coding of their product to trace where the
14 product had come from. Taylor Made had actually
15 sent their sales representatives into the Costco to
16 buy the product, to get it out of there, as an
17 example.

18 Q. Was there a difference between the kind
19 of clubs that Costco was selling from Callaway,
20 Taylor Made and Ping, and the kind of clubs it was
21 selling from Adams Golf?

22 A. The reason we were so concerned, as were
23 our customers so concerned, is that the other
24 manufacturers, when they had product in Costco, it
25 was older-generation product that had already

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1 started to be discounted in the market.

2 The fear that everybody felt in
3 regards to the Adams product, was that our product
4 was first generation. It was in the market now and
5 it was trending up. So the impact was huge in the
6 sense that this could hurt everybody's business.

7 Q. When you say "it was in the market now,
8 was trending up," can you describe that more fully?

9 A. From my experience as a retail buyer for
10 a national chain years prior, it is very rare that
11 you get an item that trends as hot as the Adams
12 Tight Lies was trending, and that's -- that was the
13 situation we found ourselves in, in the sense that
14 this product was selling so fast, it was hard for
15 us and our customers to stay on top of because it
16 was very popular.

17 Q. Can you give any examples of things that
18 happened at trade shows? When you made your
19 visits, any examples of showing that Adams Golf was
20 trending high?

21 A. In regards to the popularity?

22 Q. Yes.

23 A. Typically our trade shows in Canada for
24 the Canadian Professional Golf Association, we do
25 our booking shows the fall prior to delivery, and

14

1 our shows in October, November of '97, we literally
2 had customers running into our booth saying,
3 "There's the club, I have to have it."

4 It was something that I had never
5 experienced before, and it was -- people were
6 buying product like I had never seen the quantities
7 before.

8 Q. On the fifth paragraph, what was your
9 wholesale price for graphite Tight Lies? In other
10 words, what was the price if you bought them from
11 Adams Golf?

12 A. The price that we bought them from Adams
13 Golf? That's two different things. Our wholesale
14 price that we sold to the --

15 Q. All right.

16 A. The wholesale price that we sold to our
17 customers in Canada was \$235 Canadian for a
18 graphite Tight Lies club.

19 Q. And what was the retail price that your
20 customers would sell it to golfers?

21 A. The accepted retail in the market was
22 between \$299 and \$349 Canadian.

23 Q. So how much did each retailer Macon a
24 club that had sold?

25 A. At that time of those retail of 299 to

15

1 349, those were the accepted prices within the golf
2 industry for hard goods, or clubs in this case.

3 Q. And what happened when Costco came in?
4 What were they selling it at?

5 A. They were selling the product at
6 \$249.99, so that was obviously of grave concern to
7 our customers and ourselves, that that price that
8 they were selling it at was just above our
9 wholesale.

10 Q. So that the retailer margins were much
11 decreased once Costco came in?

12 A. The retail margins were in jeopardy, for
13 sure.

14 Q. And were your customers talking to you
15 about that?

16 A. Yes.

17 Q. That was their major concern?

18 A. They were quite adamant that it was of
19 grave concern to them.

20 Q. On the second page of this thing, what
21 do you mean by "The perception in the market"?
22 Right on the top there: "Damage to the perception
23 in the market."

24 A. The Canadian golf market is quite small,
25 in the sense that word travels fast, and this being

16

1 a new product that was trending up very sharply,
2 the perception in the market was very sensitive in
3 the sense that this was -- there could be damage
4 done very quickly to the perception of the Adams
5 product, the Adams company and, of course, to us,
6 Mackenzie Distributors. So that's why there was
7 concern that people wanted this to be addressed
8 right away, as other manufacturers had done.

9 Q. What were your -- were your customers
10 actually comparing you to other manufacturers when
11 they spoke with you?

12 A. All the time because, they wanted to
13 know that we would address the situation, and that
14 was their concern, is that would we do what the
15 other manufacturers had done because they wanted to
16 have this fixed because they were getting
17 complaints from their customers.

18 Q. Did you make any suggestions in this
19 letter of what you hoped Adams would do to help you
20 in the situation?

21 A. We found that when this became a problem
22 with products being in Costco, that we became
23 students of gray marketing because it was the fi
24 time that we had heard about it.

25 So what we did is we talked to

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1 other manufacturers as to what they had done. So
 2 we found out that Tight Lies or Acushnet Canada,
 3 which is one of the largest golf companies in
 4 Canada, had a policy set out that they would
 5 eventually cut off accounts, authorized accounts
 6 that were distributing the product to unauthorized
 7 retailers.

8 And there were other companies that
 9 were doing different things, like Ping, which was
 10 also another large golf manufacturer, serial coded
 11 their clubs to trace the product.

12 And as I mentioned before, Taylor
 13 Made would sent their sales reps in to buy the
 14 product.

15 Q. On the Ping serial coding, can you
 16 explain exactly how that would work, what that
 17 would mean?

18 A. What they would do is they would serial
 19 code each club so then they would also track where
 20 that club went to, what retailer it was sold to, so
 21 if it showed up in an unauthorized retailer, such
 22 as a Costco, by reading that serial code, they
 23 could trace as to which retailer sold it through a
 24 gray marketer to, in this case, Costco.

25 Q. And Adams didn't have that in place?

18

1 A. No, they did not have serial coding at
 2 the time.

3 Q. Did Adams ever buy up all the clubs, all
 4 the Costco clubs in Canada?

5 A. No.

6 MS. FOX: Next exhibit.

7 EXHIBIT NO. 7 - FACSIMILE
 8 TRANSMISSION SHEET DATED APRIL 14,
 9 WITH TWO ATTACHMENTS - ADAMS 009325
 10 TO ADAMS 009327

11 Q. MS. FOX: Exhibit 7 is a
 12 three-page exhibit. Can you tell us what it is?

13 A. It is a fax from Paul Holford, manager
 14 of customer service at Mackenzie Distributors, to
 15 Chris Beebe at Adams.

16 Q. Do you recognize this handwriting?

17 A. Yes, I do.

18 Q. And whose handwriting is it?

19 A. It's Paul Holford's.

20 Q. And who was he -- he was writing to

21 Chris Beebe?

22 A. Yes.

23 Q. Who was Chris Beebe?

24 A. Chris Beebe was the director of
 25 international sales for Adams Golf.

19

1 Q. And was this letter written at your
 2 direction?

3 A. Yes.

4 Q. And did you have knowledge of what he
 5 was going to say?

6 A. Yes.

7 Q. Why was he sending this document to
 8 Chris Beebe?

9 A. As I mentioned earlier, we became
 10 students of the gray market to try and stop this as
 11 quickly as possible, and one of the things we found
 12 in talking to other companies, golf companies in
 13 Canada, was what they had done when this situation
 14 arose, and that's why we sent this transshipment
 15 re: distribution policy from Acushnet Canada, down
 16 to Chris Beebe.

17 Q. On the first page, it says: "As per our
 18 discussion." Do you know what the substance of
 19 those discussions between Holford and Beebe was?

20 MS. REED: Form.

21 MS. FOX: I'm just asking him,
 22 does he know.

23 THE WITNESS: Sorry.

24 Q. MS. FOX: Do you know the
 25 substance of the discussions between Holford and

20

1 Beebe?

2 A. The topic was the gray markets and
 3 products in Costco.

4 Q. To your knowledge, did Adams Golf adopt
 5 such a policy at the time that Holford sent it down
 6 to them, which would have been April 14, 1998?

7 A. No. No action was taken at the time.

8 MS. FOX: We're up to Exhibit

9 8

10 EXHIBIT NO. 8 - ONE-PAGE FAX TO
 11 GREG PRATT FROM CHRIS BEEBE, DATED
 12 APRIL 15, 1998 - MCK00084

13 Q. MS. FOX: Exhibit 8 is a
 14 one-page exhibit. Can you identify what this is?

15 A. This is a fax from Chris Beebe of Adams,
 16 to myself.

17 Q. Was it in your files?

18 A. Yes.

19 Q. And kept in the ordinary course of
 20 business?

21 A. Yes.

22 Q. In the second paragraph there, did you
 23 agree with Beebe's reasoning about buying up all
 24 the stock from Costco?

25 A. No, I didn't.

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1 Q. What did you hope he would do?

2 A. I hoped he would buy -- give us

3 authorization to buy the stock from Costco.

4 Q. Why did you hope he would do that?

5 A. With gray market, you don't know if

6 there will be a next shipment, so at the time, we

7 had hoped that by buying what was in the Costcos,

8 would be the end of it.

9 MS. FOX: Next exhibit.

10 EXHIBIT NO. 9 - FACSIMILE

11 TRANSMISSION SHEET DATED APRIL 16,

12 WITH THREE ATTACHMENTS - ADAMS

13 009331 TO ADAMS 009335

14 Q. MS. FOX: Can you tell us what

15 Exhibit 9 is?

16 A. Exhibit 9 is a fax from Paul Holford,

17 manager of customer service at WDC Mackenzie

18 Distributors, to Chris Beebe at Adams.

19 Q. When was that sent?

20 A. That was sent on April 16, 1998.

21 Q. Again, do you recognize the handwriting?

22 A. Yes.

23 Q. It's Paul Holford's handwriting?

24 A. Yes.

25 Q. Did he send this stuff at your

22

1 direction?

2 A. Yes.

3 Q. Did Paul Holford report to you?

4 A. Yes.

5 Q. Take a look at the substance of the

6 letter. Number 2 talks about affected accounts.

7 What were those? Just listing stuff, or what?

8 A. This is a list of accounts nation wide

9 that we felt at the time were feeling the impact of

10 the Costco having the Adams Tight Lies because

11 these were accounts that had our Adams clubs.

12 Q. Are they all across Canada?

13 A. Yes.

14 Q. What does this say about the 60-day

15 satisfaction rule? What was that? What was the

16 60-day satisfaction rule?

17 A. The 60-day satisfaction rule was where

18 we went out to our customers and asked them for

19 their support in giving us 60 days in which we

20 would solve this problem. And by doing that, they

21 would hold on to the product, and if they weren't

22 satisfied within 60 days, we would take the product

23 back.

24 Q. Did you make that promise to them with

25 Adams Golf's support or completely independently?

23

1 A. We did that on our own.

2 Q. Why did you do it?

3 A. We needed to -- we needed to support o

4 customers, and we wanted to show them that, whi.

5 we sold them other products as well, we wanted to

6 show them that our loyalty to them was strong.

7 And we needed to send a message to

8 them because, at the time, we had not had any

9 direction from Adams as to what to do to get that

10 product out of Costco.

11 Q. And this is about three weeks after you

12 first spoke with Adams about it?

13 A. Yes.

14 Q. Had you lost any customers?

15 A. Yes, we had product returned and lots of

16 threats.

17 Q. So it says 108 pieces were returned or

18 cancelled. What do you mean when you say "lots of

19 threats"?

20 A. Threats from customers along the lines

21 of -- at that time of year, a lot of customers

22 would have been receiving their spring orders, so

23 some had cancelled their spring orders, but also

24 threats along the lines of threatening to cancel

25 spring orders that were coming in past that date o

24

1 repeats after the fact.

2 Q. What is the meaning of the map that was

3 sent along with this fax?

4 A. When we first called down to Adams Golf

5 to tell them about product being at Costco, telling

6 them at the time there was 52 Costcos in Canada,

7 there was not great concern at Adams that 52 stores

8 could impact our business.

9 This really is an education to

10 Adams people about how the Canadian market works in

11 the sense that 52 Costcos does, in fact, cover the

12 Canadian market.

13 Q. Where is the population of Canada mostly

14 gathered?

15 A. We are mostly along the 49th parallel,

16 the U.S. border.

17 Q. Paul Holford mentioned in his letter,

18 one last thing about that U.S. border. It's the

19 second-to-last paragraph.

20 A. That was in reference to U.S. consumers

21 that came up to Canada, who were members of Cost

22 could actually buy the Adams Tight Lies in a

23 Canadian Costco store at a reduced price. So

24 \$161.85, as he says, is current exchange rates in

25 Canada.

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1 And it had a huge impact on the market.

2 Q. MS. FOX: We've looked at your
3 sales in July, and they were significantly down
4 from your sales in June.

5 What people were publicly aware of
6 the problems of Adams Golf by the time July rolled
7 around?

8 MS. REED: Objection. Form.

9 A. Everybody that had anything to do with
10 Adams Golf in Canada at that time from the
11 standpoint of our customers were aware. So as soon
12 as that happened, we made sure that our direct
13 reports, if you will, at Adams Golf, the Chris
14 Beebes, the Mark Consalves and the Barney Adams
15 were aware of this problem, because we were a
16 distributor and it was our job to let them know
17 when something to this scale was affecting our
18 business.

19 So we -- as you see in the
20 documents, we let them know as soon as we knew that
21 this was happening.

22 MS. REED: Listen to the
23 question again. Can you repeat the question?

24 COURT REPORTER - (By reading):

25 "We've looked at your sales in

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1 July, and they were significantly
2 down from your sales in June.

3 What people were publicly aware
4 of the problems of Adams Golf by
5 the time July rolled around?"

6 MS. REED: Same objection.

7 Q. MS. FOX: I'm talking about
8 who in the general public would have been aware?

9 A. The golfing public. It was obvious that
10 a lot of people knew because a lot of product was
11 moving through Costco, so word travels fast in the
12 golf industry, within the industry and also within
13 the golfing public. That's why they were selling a
14 lot of product at the discount retailer.

15 EXHIBIT NO. 17 - ONE-PAGE JANUARY
16 4, 1999 CORRESPONDENCE TO ADAMS
17 RETAILER FROM BARNEY ADAMS AND CHIP
18 BREWER - MCK00026

19 Q. MS. FOX: Mr. Pratt, can you
20 identify Exhibit 17?

21 A. Yes. This is a letter dated January
22 4th, 1999, that came from Barney Adams and Chip
23 Brewer, who was the senior vice president of sales
24 and marketing, to Adams retailers.

25 Q. When did Chip Brewer get involved in

51

1 these issues? Do you know?

2 A. I'm not clear on the date as to when he
3 got involved.

4 Q. In the beginning, in April, was he the
5 chief person you were dealing with?

6 A. My understanding is, I don't believe
7 Chip Brewer was in Adams Golf until later in 1998.

8 Q. Was this letter sent to your customers?

9 A. Yes.

10 Q. Did you request that it be sent to your
11 customers?

12 A. Yes.

13 Q. And why did you want them to get it?

14 A. It's one thing to get a letter from the
15 Canadian distributor, but we knew it would have
16 greater impact if it came from the principals; in
17 this case, the head of Adams Golf. And Barney
18 had -- at that time, had a presence in the market
19 and, for something this grave, it would have been
20 positive for us to -- for our retailers to receive
21 something from him.

22 Q. When you said "Barney had a presence in
23 the market," what -- why did Barney have a presence
24 in the market?

25 A. Barney had a presence in the market

52

1 because he had come up with this Tight Lies Fairway
2 Wood that was, in many ways, changed a part of the
3 game. And he found a niche at the time, and he not
4 only found -- invented this product, but just the
5 way he also marketed through the infomercial, in
6 many ways changed a lot of the way golf was
7 marketed.

8 Q. Can you explain what you mean when you
9 say "marketed through the infomercial"?

10 A. If you look at our sales from the fall
11 of 1997, from the moment that the infomercial on
12 the Adams Tight Lies hit the Golf Channel, which at
13 the time was more widely distributed in Canada than
14 it is in the United States, our sales were impacted
15 immediately. Actually, I believe it was over 70
16 percent of my whole -- the wholesale department's
17 sales came from that day the infomercial hit, to
18 the end of calendar year. And it was -- that is
19 just -- that's not normal in golf business.

20 So while infomercials are all over
21 the TV now, his way of marketing through that
22 infomercial, in many ways, was one of the first and
23 most popular.

24 Q. Did Barney Adams himself show up on the
25 infomercial?

53

1 A. Yes.

2 Q. Can you describe it at all?

3 A. I don't know if he was in the first one.
4 I know they did some -- they redid it a little bit
5 later on and he was in there. And he would be --
6 if I recall, he was with Hank Haney, who was a
7 leading golf instructor, talking about the product,
8 and because of the great success of this product
9 and -- he came to have a great presence in the golf
10 business and, from that moment on, was quite often
11 quoted in regards to anything in the golf business,
12 trends or whatever.

13 MS. FOX: Can we just stop for
14 a minute.

15 (BRIEF ADJOURNMENT)

16 Q. MS. FOX: We mentioned some
17 terms which were not completely clear:
18 "Transshipment," "parallel shipment" and "gray
19 marketing." Could you go through what those things
20 mean to you in this context?

21 A. Well, when this whole situation started,
22 we didn't know what gray marketing, as we've come
23 to call it, what it was, so it started to take on
24 different names like parallel exporter,
25 transshipment, and slowly we just all accepted it

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1 as gray marketing, but that's what they settled on.
2 They all meant, to us, the same thing.

3 Q. When Beebe first visited Mackenzie, do
4 you remember the substance of those conversations?

5 A. Well, the timing of his first visit was
6 right after the clubs had hit Costco in Canada, so
7 much of our discussion was about the clubs being in
8 Costco, definitely; and obviously him being new to
9 Adams, there were other topics that we wanted to
10 talk about because, at the time, the information
11 that he relayed to us was the business that we were
12 doing, is we were the largest account that Adams
13 had, period, including accounts in the United
14 States and internationally. So obviously he wanted
15 to come up and become more familiar with our
16 business.

17 Q. Let's go back to Exhibit 10, right in
18 the first paragraph of Exhibit 10. Exhibit 10 is
19 the June 8 letter from Chris Beebe to you and Dave
20 Brown and Ryan Magnussen.

21 What was your understanding of
22 Barney's statement, that he said:

23 "We should do what has to be done
24 to keep our sales strong and our
25 reputation."

55

1 A. I took that to mean that he was
2 concerned about the gray market or Costco situ-
3 and wanted to protect Adams' reputation in the
4 marketplace, in Canada and in other places.

5 Q. We talked before a little about the
6 amount of time that your company expended chasing
7 after the gray marketing. Can you give any
8 statement of amounts of time?

9 A. No, that would be tough for me to
10 quantify, but suffice it to say that it was a
11 significant amount of time because, tied in with
12 this increase in sales, what we did is we moved our
13 outside sales force from commission to salary, on
14 the basis that sales would continue to rise. It
15 was a big move for a small distributor.

16 And we also enlarged our inside
17 sales force who did the day-to-day calling of
18 accounts. So unlike a lot of Canadian golf
19 distributors, we actually had a duo sales force,
20 and a lot of their time and when this problem
21 started, was spent on handling complaints,
22 addressing concerns, the stress that went with it,
23 and that was inside our office and out in the
24 field. And it was very time consuming. As far as
25 what it cost, I couldn't tell you.

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1 Q. You spoke about the meeting at the
2 airport when Gonsalves flew up here. Who else was
3 at that meeting?

4 A. Myself, Ryan Magnussen and David Brown.

5 Q. I think my question may have been
6 unclear before, so I want you to repeat yourself,
7 probably.

8 Can you explain the effect of the
9 existence of Adams clubs in Costco on retailer
10 margins, on the margins at the retail?

11 MS. REED: Objection to form.

12 A. Well, our regular retail customers who
13 we sold to, their margins were grossly affected by
14 the product being at Costco, because their price
15 was lower, and now the price matching strategy,
16 they had to actually -- that was the beginning of
17 the lowering of their retails, so the margins for
18 the Adams Tight Lies clubs in the market to our
19 retailers came down.

20 Q. MS. FOX: Did you lose any
21 customers because of the lower retail margins?

22 A. Our day-to-day struggle was to try and
23 maintain business, and it was a very stressful
24 time, to say the least, in trying to maintain our
25 business because we were a young distributor,

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1 Q. Did Lion Golf have the same popularity
2 that Adams Golf had?

3 A. No.

4 Q. Why not?

5 A. The thing about Adams clubs,
6 specifically the Tight Lies, was that it was
7 something new to golf, and Lion Golf was kind of
8 the same of what was already out there. It wasn't
9 a brand name at the time.

10 Q. Now, how many retailers did WDC
11 Mackenzie distribute to?

12 A. Well, by having exclusive Canadian
13 rights, there was -- I don't remember the exact
14 amount of retailers we had right across the
15 country. That would be a combination of the green
16 grass and of the pro shops and of the retail
17 stores. I believe there was 1,400 golf courses in
18 Canada, and there was about 100 retail shops in the
19 country, and I'm going off memory.

20 Q. I have a document, and I need to find
21 it, where I'm seeing there were 400 Adams accounts,
22 but out of the total of 2,200 golf accounts that WC
23 had. Does that sound right?

24 A. I think the maximum potential is 2,200.

25 Q. But does 400 accounts sound right for

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1 Adams accounts?

2 A. That number sounds like it could be
3 correct.

4 Q. Tell me, who were the competitors of
5 Adams Golf in the industry?

6 A. The competitors of Adams Golf was any
7 other golf manufacturer out there.

8 Q. And who were the primary golf
9 manufacturers?

10 A. The primary major golf manufacturers
11 would have been the Callaway, Ping, Titleist,
12 Taylor Made.

13 Q. Are there any other major competitors of
14 Adams Golf?

15 A. Orlimar became a major competitor of
16 Adams Golf. It wasn't in the beginning in 1998.
17 It wasn't even on the radar screen from the
18 standpoint of a competitor. They were in the golf
19 business, but their product hadn't reached the
20 popularity that -- of the Tight Lies.

21 Q. Did Orlimar become popular later on?

22 A. Very.

23 Q. Could you describe that popularity for
24 me?

25 A. Orlimar marketed their product similar

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1 to Adams, with an infomercial, and it did very
2 well.

3 Q. Did it have -- I'm not a golfer. Did it
4 have a similar design, like club face, that Adams
5 Golf did?

6 A. It did. It had a similar design. It
7 was in the fairway wood category, and it had a
8 shallow face, similar to the Tight Lies design.

9 Q. So when you were talking about Barney
10 Adams being the inventor of Adams Golf, sort of
11 changing golf in that way, was it that shallow
12 face?

13 A. I think the niche that Barney found was,
14 while golf is predominantly a male sport, men were
15 reluctant to use fairway woods, and the acceptance
16 of his shallow-faced fairway wood, opened up
17 business in -- a niche of the business that hadn't
18 been exploited to that extent before.

19 Q. With your retail experience in the past,
20 when someone gets in a niche, do competitors later
21 on come in and try to get into that niche market as
22 well?

23 A. Yes.

24 Q. Was that what happened with Orlimar?

25 A. Yes.

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1 Q. Were any other club manufacturers doing
2 that?

3 A. Yes.

4 Q. I'd like to look at some of these
5 documents that Ms. Fox went through. You started
6 out by saying that when Adams Golf clubs showed up
7 at Costco, that you had spoken with Mark Gonsalves.

8 Do you remember about when that
9 first conversation happened with Mark?

10 A. It would have been probably immediately,
11 because of the concern.

12 Q. Okay, so that would probably be, if we
13 look at Exhibit 5, which is the first one we looked
14 at, would it probably be contemporaneous with that
15 last week in March?

16 A. Yes.

17 Q. After you spoke with Mark Gonsalves, I
18 noticed in the documents that your communications
19 sort of switched to Chris Beebe?

20 A. Yes.

21 Q. Was that because Chris Beebe had come to
22 the company and then taken over the international
23 segment of Adams Golf's business?

24 A. Yes.

25 Q. I'm going to try to go chronologically

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1 the page "...has not received much
product to date, this pricing has
done some short-term damage to the
4 perception in the market."

5 Is it an accurate statement that at
6 that time, Costco had not received much product to
7 date?

8 **A. They hadn't received much product to
9 date, but the damage was being done.**

10 Q. Yes, and so in your statement, you say
11 that they had done some short-term damage. Is that
12 an accurate statement as well?

13 **A. Yes.**

14 Q. In the next paragraph, the second
15 sentence, you say:

16 "While they all agree that this is
17 the hottest club in the market,
18 they are uncomfortable with
19 Costco's retail being only \$15 more
20 than their wholesale "

21 So let's take that in pieces. So
22 did everyone agree that Adams Golf was the hottest
23 club in the market at the time?

24 **A. For the most part, yes. The majority of
our accounts agreed that that was the hottest club**

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1 **in the golf market.**

2 Q. Then later on in this paragraph, you
3 mention -- the second-to-last sentence, you say:
4 "We have asked them to give us 60 days."

5 **A. Yes.**

6 Q. So you'd asked the retailers, who were
7 upset about this problem, give us 60 days and we
8 will figure out what we're going to do?

9 **A. Yes.**

10 Q. And the date of this is April 13th,
11 1998?

12 **A. Yes.**

13 Q. So by June 13th, 1998, you told the
14 retailers, we will have figured out what we're
15 going to do with this?

16 **A. That was the hope on our part and that's
17 the action we took on our own, is to basically buy
18 ourselves some time because the next 60 days took
19 us through a lot of the busy golf season, so that
20 was our thinking, that hopefully they would stand
21 by us.**

2 Q. Second to the last paragraph, you're
addressing Chris Beebe here, and you say:

4 "Your quick action on the order for
25 King Par in Flint, Michigan stopped

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1 an order of 1,500 clubs going to
2 the one store account."

3 Do you recall that being the case?

4 **A. That he stopped that order?**

5 Q. Yes.

6 **A. Yes, I do.**

7 Q. And what was your recollection of that
8 incident, or that event?

9 **A. I remember him calling us to say he had,
10 as he put it, grabbed the order off the fax. And
11 we were quite delighted that hopefully this was the
12 beginning of the end.**

13 Q. Did you have any way of knowing whether
14 it was going to be the beginning of the end?

15 **A. No.**

16 Q. King Par in Flint, Michigan, based on
17 Exhibit 18 that I have shown you earlier, was a
18 source of gray marketing at Callaway and Taylor
19 Made. Is that accurate?

20 **A. We believed it to be.**

21 Q. So there was a genuine hope that if you
22 had found the source of the gray market here, that
23 the gray marketing would stop?

24 **A. That was our hope.**

25 Q. And then one other thing I want to go

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1 through with this letter, in that same paragraph on
2 King Par, it says:

3 "Ping was able to control this
4 problem when they started to serial
5 code their clubs."

6 Do you remember that to be the
7 case?

8 **A. In regards to Ping?**

9 Q. Yes.

10 **A. Our perception of Ping was that they --
11 because of the serial coding of the clubs, in our
12 research in talking with them, that's the reason
13 they felt as to why they didn't have the gray
14 market problem.**

15 Q. So if a company serial coded their
16 clubs, then they could anticipate, based on the
17 history with Ping, that could stop the gray
18 marketing?

19 **A. It could if your system was good in
20 recording and tracking the numbers. That was the
21 key. And easier said than done when you're
22 manufacturing the number of clubs that they're
23 manufacturing.**

24 Q. Let's turn to Exhibit 8 that we've gone
25 over earlier. It's Bate stamped MCK84, and it's

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1 place in case this occurs again, as
2 several other major companies,
Callaway, Ping and Taylor Made,
3 have all reacted to similar
4 problems by buying back the Costco
5 stock or helping pros match the
6 Costco pricing."

7 Do you have any recollections of
8 discussions about having a plan in place?

9 **A. Well, that was the thought all along in**
10 **the sense that from talking to other manufacturers,**
11 **that this could have been again -- happen again**
12 **with more orders. So there was some discussion**
13 **about what should we do.**

14 **Q. And so the two options that, at least,**
15 **were discussed here, were you could either buy back**
16 **the Costco stock or help the pros match the Costco**
17 **pricing?**

18 **A. Yes.**

19 **Q. Let me ask you about Costco. We talked**
20 **about that Costco sells things cheaper than the**
21 **golf pros were selling them?**

22 **A. Yes.**

23 **Q. So if Costco is selling things cheaper**
24 **than the golf pros are selling them, do they sell**

82

1 faster?

2 **A. Typically a retail, if somebody is**
3 **selling a popular product at a lower retail, they**
4 **will sell faster.**

5 **Q. So do you think Costco had a quick or a**
6 **slow sellthrough of Adams Golf clubs?**

7 **MS. FOX: If you know.**

8 **MS. REED: Absolutely.**

9 **A. Best of my recollection, at first it**
10 **wasn't that fast because it took awhile for word to**
11 **get around, and as they got more product into all**
12 **the stores, it started to sell faster.**

13 **Q. MS. REED: But as of your**
14 **meeting with Chris Beebe at the end of April, the**
15 **feeling was that, at that time, most Costcos were**
16 **out of the product?**

17 **A. That was the hope.**

18 **Q. Had you been tracking the product at**
19 **Costco?**

20 **A. Yes.**

21 **Q. And at that time, were Costcos filled**
22 **with Adams Golf clubs or were they mostly out of**
23 **Adams Golf clubs?**

24 **A. Initially the Costco stock was not that**
25 **high, but it increased significantly as obviously**

83

1 **the gray marketers got their hands on more product.**

2 **Q. Do you recall when it increased**
3 **significantly?**

4 **A. This thing heated up pretty quick from**
5 **this point on, through the busy part of the golf**
6 **season. So from between then, and the peak of our**
7 **golf season is Father's Day for retail sales, so it**
8 **increased significantly from that time.**

9 **Q. So between the end of April, so May to**
10 **Father's Day, which is mid June, the Costco**
11 **inventory increased?**

12 **A. Yes.**

13 **Q. Tell me a little bit, since I'm not a**
14 **golfer, about the golfing season. When is the sort**
15 **of hot golf time, high sales, and when is the slow**
16 **golf time or slow golf sales?**

17 **A. It's different in every country, and**
18 **because we have our four different seasons in**
19 **Canada, our season -- typically the retail stores**
20 **and the pro shops at the golf courses will receive**
21 **their spring shipments in anywhere from the end of**
22 **February to the middle of April. And the sales**
23 **will be -- will grow up to Father's Day, and quite**
24 **often Father's Day can be significant.**

25 **Q. And then what happens after Father's**

84

1 Day?

2 **A. The sales are still strong for the golf**
3 **season. It spikes, if you will, at Father's Day,**
4 **but sales are still strong through the golf season,**
5 **and especially strong for trending products.**

6 **Q. What is the golf season?**

7 **A. Our golf season typically in Canada is**
8 **about the middle to -- actually the third week in**
9 **April to end of September, but at retail, with a**
10 **lot of our golfers travelling to the United States,**
11 **the retail is strong throughout the year.**

12 **Q. So tell me about retail versus**
13 **wholesale.**

14 **A. It's -- sorry, when I call it retail, I**
15 **mean like the non-courses, or cement shops, as we**
16 **used to call them. So there's your pro shops,**
17 **which are your green grass, and then there is your**
18 **retail, which is like your cement shops, which are**
19 **not on golf courses. So when I refer to retail, I**
20 **really just mean the non-course shops.**

21 **Q. What are some examples of those?**

22 **A. It would be your Nevada Bob's and a lot**
23 **of independent stores throughout the country.**
24 **There's Pro Golf.**

25 **Q. So retail would even be strong through**

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1 that they want to know how does that impact me
2 immediately.

While they were pleased, they
wanted to know the problem had been resolved. So
5 it was a short-term positive.

6 Q. Let's talk about the price matching. I
7 guess I sort of skipped that whole thing. Were the
8 retailers happy to hear about the price matching?

9 A. It was mixed feelings. They were happy
10 that something was being done, even though it had
11 taken a little while. The price matching, while it
12 was a solution, if you will, it was -- it made them
13 uncomfortable because now their regular customers
14 who came in, they couldn't really talk to them
15 about this price matching strategy until they
16 brought it up. So they were pleased that something
17 was being done, but they were still concerned that
18 this wasn't the complete answer.

19 Q. In your early correspondence with Chris,
20 you had mentioned you could either price match or
21 you could buy back the inventory. In those
22 letters, I didn't see anything about preferences,
23 that we think you should go back and buy. Why is
24 that?

-- A. Well, we're the distributor. We don't

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1 have any discretion on an issue like this because
2 of the great dollars that are at stake.

3 For the long term of this, it is
4 Adams' product. Since we were the distributor,
5 they are the holder of the product, and we weren't
6 in a position to dictate to them what to do. We
7 wanted something to be done and it was their
8 decision ultimately what was done. So it wasn't
9 our position to say what they should do.

10 Q. Absolutely, but did you feel like you
11 had a good enough relationship with Chris where you
12 could recommend one or the other?

13 A. No, it wasn't a case of -- we always had
14 a great relationship with Chris. It was more a
15 case of just laying out the options and letting
16 them make the decision.

17 Q. Did you tell Adams before: "Here's
18 option one, you can price match; here's option 2,
19 you can buy back inventory, but the danger with
20 option 1 is that it won't work "

21 MS FOX: Objection to form.

2 A. Well, Chris had addressed earlier that
3 he didn't like the idea of going in and buying the
4 product, so it seemed like that idea had been shot
5 down.

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1 So probably the most important
2 thing is that we were the distributor. It wasn't
3 for us to dictate. And yes, we could suggest, but
4 he pretty much shot down that idea because, by this
5 point in June, there was a significant number of
6 clubs and we didn't know when it would stop, so
7 maybe he thought it was going to be too expensive a
8 venture to buy all the product.

9 Q. MS. REED: But in any of your
10 earlier letters, did you say anything that can be
11 problematic with option 1? Which option one being
12 price matching.

13 A. Not to my recollection that there was
14 problems with it. Our position was that we wanted
15 something to be done, anything to be done that
16 would help our customers out.

17 Q. With this price matching policy, you
18 sort of discussed that the way it worked would
19 be -- and correct me if I'm wrong, the way it
20 worked would be if a customer came into a retailer
21 and said, Hey, I saw the club at Costco, then they
22 could price match?

23 And you mentioned that they
24 couldn't advertise it at \$249. Would you have
25 wanted them to advertise the product at \$249?

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1 A. It was a very confusing time in the
2 sense that when we knew -- well, from experience,
3 was that the retail price that we knew in the
4 market that was accepted for the Tight Lies, that
5 was over. And we wanted everybody to have a fair
6 margin, in addition to ourselves.

7 So if any price was going down, our
8 price had to go down, so no, we didn't want that to
9 happen.

10 Q. So insofar as structuring a price
11 matching policy, you wouldn't have wanted to
12 structure a price matching policy where they could
13 advertise it at \$249?

14 A. No.

15 Q. Now, you mentioned that one concern
16 about the price matching is that it would not stop
17 the flow of product; is that right?

18 A. Yes.

19 Q. Would purchasing all of the inventory at
20 Costco stop the flow of product?

21 A. Initially. No, it wouldn't stop the
22 flow of product into Costco. It would -- that
23 moment, it would take all the product out of
24 Costco.

25 Q. And you had mentioned earlier as well

93

1 that with the gray market, you don't know if there
2 will be a next shipment?

3 **A. That's right.**

4 **Q.** That you hoped that it would be the end
5 of it?

6 **A. Yes.**

7 **Q.** So the only option for stopping a flow
8 of product would be to identify who the gray
9 marketers were?

10 **A. Yes.**

11 **Q.** And cutting them off?

12 **A. Yes.**

13 **Q.** And you were aware that Adams Golf cut
14 off King Par, for a 1,500 club order?

15 **A. Actually, we were aware that they**
16 **stopped that order. We don't know that they ever**
17 **stopped doing business with King Par. We just know**
18 **for that specific order, that that was stopped.**

19 **Q.** Were you aware that they also stopped an
20 order to Manatee Golf?

21 **A. The name sounds familiar, so yes, that**
22 **could have been. Chris regularly would check for**
23 **other orders, and that's why I think they put that**
24 **policy in, where the orders had to be signed off**
25 **over a certain quantity. So that's -- the name**

94

1 sounds familiar.

2 **Q.** So you were aware that Adams Golf had
3 implemented a policy where, for large orders, they
4 had to be signed off on?

5 **A. Yes.**

6 **Q.** And you were aware, at least of one
7 instance with King Par, of stopping a large order?

8 **A. Yes.**

9 **Q.** And at some point, were you aware that
10 Adams Golf was going to serialize their clubs?

11 **A. There was discussion about that. We**
12 **know that they did later serialize their clubs, so**
13 **there was the discussion.**

14 **Q.** Do you know when Adams Golf decided to
15 serialize their clubs?

16 **A. I don't recall exactly. I believe it**
17 **was in 1999.**

18 **Q.** We'll won't go over this. By spring of
19 1999, your people were writing back with serial
20 numbers of clubs from the Costco stores?

21 **A. Yes.**

22 **Q.** So are you aware of how long it takes to
23 implement a serialization program at a golf
24 manufacturer?

25 **A. No.**

95

1 **Q.** Would it seems logical to you that it
2 would take a little bit of time to actually
3 serialize the clubs and get that process in order?

4 **A. Yes.**

5 **Q.** So the only way you could stop the flow
6 of product that is a big concern is to either
7 identify the gray marketers and stop shipping to
8 them, or serialize your clubs in a way that you can
9 monitor them?

10 **A. With a proper system of serial coding**
11 **that you could follow up on the product. The**
12 **concern to us by this time is that it had been**
13 **going on for months, and a lot of the damage had**
14 **been done.**

15 **Q.** So by the end of June, I'm trying to
16 summarize where Adams Golf was at in addressing
17 this problem. My understand being is that by the
18 end of June, they had implemented a price matching
19 strategy; is that right?

20 **A. Yes.**

21 **Q.** And by the end of June, they were
22 monitoring large orders; is that right?

23 **A. Yes.**

24 **Q.** And by the end of June, they had
25 actually stopped a 1,500 club order to King Par?

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1 **A. Yes.**

2 **Q.** Let's turn to Exhibit 11, which is the
3 June 10, 1998 memo from WDC Mackenzie to the
4 retailers and golf pros, the WDC customers.

5 The end of the first paragraph in
6 this June memo, which is Bate stamped MCK1061.
7 That very last sentence, it says:

8 "With your support year to date,
9 even with the headache of the
10 Costco situation, you have put the
11 Adams Tight Lies family of clubs on
12 an incredible sales pace in
13 Canada."

14 Is that an accurate statement?

15 **A. Yes.**

16 **Q.** So at the time in June, the pace of the
17 Adams clubs was going strong?

18 **A. Yes.**

19 **MS. FOX:** Can I clarify
20 something? I think our Exhibit is 00075. It
21 doesn't matter, but I just wanted to

22 **MS. REED:** For the record, yes.
23 I'm using a different copy It's Bate stamped
24 MCK75. Very good, thank you

25 **Q. MS. REED:** Now, in this first

101

Q. Therefore, number 2 is that: "Adams Golf will cancel order number" and then it doesn't have an order number. And then number 3 says: "WDC Mackenzie will accept P.O. number and will pay for it in full by October 31st, 1998."

And then number 4 says: "With the exception of all of the above, all WDC Mackenzie orders will be paid in full 30 days after shipment from Adams Golf."

Do you recall what your payment terms were with Adams Golf?

A. I don't. I had nothing to do with that.

Q. Who would be the person to talk to about the payment schedule?

A. I would say Ryan Magnussen.

Q. Okay. In the last paragraph, Chris says:

"I believe that the proposal above does not place an undue burden on either company and it is a fair solution to the situation that we find ourselves in."

Now, I know you didn't write this,

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1 but when you were -- at least you said you recall
2 discussing this. What is the situation that you
3 found yourselves in at this time? And you can say
4 you don't know.

**A. You know what, I don't really know
6 because the financial end, I wasn't involved in at
7 all.**

Q. Let's turn to Exhibit 14. Exhibit 14 is
9 Bate MCK72 to 74. So Exhibit 14, it's a memo from
10 you to Barney.

And in number 2, you go through
12 your sale -- your units sold in the Canadian market
13 by month. And I'm trying to understand, to
14 understand the total amounts sold, would it be safe
15 to multiply the units sold times the wholesale
16 price, which is 235, if I recall correctly?

A. Generally speaking, yes, it would.

Q. So generally, you take these numbers,
19 you multiply by 235, you would find out the dollar
20 amount?

A. Yes.

Q. In Canadian dollars, I'm guessing this
23 is?

A. Yes. Loonies.

Q. So when you look at those numbers listed

103

1 In number 2 on Exhibit 14, do those look accurate
2 to you?

A. Yes.

Q. Let's turn to the second page of Exhibit
5 14, which is MCK73. In item 4, part A, it says,
6 towards the end of that paragraph:

"Luckily, not all markets in the
8 country had a Costco with Adams
9 product. This helped keep the
10 sales acceptable for a product
11 trending as hot as Adams was."

Was that an accurate statement?

A. Yes.

Q. So at the time, even though from a
15 previous exhibit we'd seen, there were lots of
16 Costcos all over, not all Costcos had Adams
17 products?

A. Not initially, no.

Q. And at this time, in August, 1998, not
20 all markets had had Costco product?

A. No, they hadn't.

Q. At this time, August 19, 1998, you
23 believed that sales were acceptable to a product
24 trending as hot as Adams was?

MS. FOX: Object to the form.

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Q. MS. REED: Based on what you
2 read, is there anything that you wrote in this
3 letter: "This helped keep the sales acceptable for
4 a product trending as hot as Adams was."

**A. Keeping in mind that I was writing this
6 letter to the CEO of Adams Golf, I wanted to keep
7 it as positive as possible.**

Adding to that, that it's very hard
9 to project accurately what those acceptable numbers
10 were because our -- typically retail and wholesale,
11 you judge your business from the previous year, and
12 the way this product was trending, we felt that
13 these were acceptable.

Q. Now, let's talk about product trends and
15 hot products. You had mentioned -- you mentioned
16 here, and in previous things, that Adams Golf was a
17 hot product. At some point, does a hot product
18 become not hot?

A. Yes.

Q. When is that?

**A. Well, it varies on the product. It
22 varies on the market, pardon me. In golf,
23 typically a golf product can have a short shelf
24 life of one to two seasons.**

Q. When did Adams Golf start -- introduce

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1 the Tight Lies, if you recall?

2 **A. Well, the Tight Lies introduction on a**
 3 **grand scale to the golf market was October of 1997,**
 4 **through the infomercial. It was in the market**
 5 **prior to that, but didn't have the market awareness**
 6 **until October of '97.**

7 Q. So you would accept that with a hot
 8 product, that it would be hot, as you testified
 9 earlier, for one season or two seasons, somewhere
 10 around that?

11 **A. Typically that was the case. The**
 12 **challenge and the good challenge with the Tight**
 13 **Lies through the way it was marketed and the**
 14 **infomercial and the momentum that this product had,**
 15 **what is there was no signs that this was slowing**
 16 **down.**

17 Q. So do you believe, from your
 18 interactions with Chris Beebe and others at the
 19 company, that the company didn't believe that this
 20 was slowing down either?

21 **A. No.**

22 Q. Do you think anyone could have known
 23 that this product was going to slow down?

24 **A. No.**

25 Q. In this letter, you also discuss some

106

1 other -- in point 4, you say:

2 "Even with significant sales
 3 growth, there had been obstacles."

4 And the first thing that you
 5 discuss is Costco, which we've been focussing; on
 6 and the second thing you discuss is the falling
 7 Canadian dollar.

8 **A. Right.**

9 Q. Could you tell me a little bit about
 10 that?

11 **A. I wasn't involved much with the**
 12 **financial end and especially with the U.S.**
 13 **exchange, but it was a fact that the dollar was**
 14 **being affected at that time.**

15 Q. How would that impact your golf, if at
 16 all?

17 **A. More affected our immediate margin than**
 18 **our sales. It would only affect our golf sales if**
 19 **we had to increase our prices.**

20 Q. So based on what -- you say here:

21 "The U.S. dollar costs us 18 cents
 2 more now than it did ten short
 3 months ago. As a result, WDC had
 4 to raise its wholesale prices 8 1/2
 5 percent effective August 10."

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1 Is that an accurate statement?

2 **A. That is an accurate statement, and it is**
 3 **actually a reflection of what was going on in the**
 4 **golf market in Canada at the time. So we were**
 5 **raising our prices, as were other golf**
 6 **manufacturers, so it was a frustration in the**
 7 **Canadian market that all of us had to raise our**
 8 **prices.**

9 Q. So part of the squeeze that people felt
 10 was due to this 8 1/2 percent increase at the
 11 wholesale price?

12 **A. It was felt from other manufacturers as**
 13 **well, so it wasn't exclusive to Adams.**

14 Q. So the entire industry was feeling this?

15 **A. Yes.**

16 Q. At least in Canada?

17 **A. Yes.**

18 Q. Turning to the next page, MCK74. A
 19 third thing that you mentioned is Orlimar. So tell
 20 me a little bit -- so this is dated August 19,
 21 1998. So tell me a little bit about Orlimar at
 22 this time.

23 **A. Orlimar entered the market later. Their**
 24 **product's similar to the Tight Lies, entered the**
 25 **market later than the Tight Lies and it was being**

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1 **marketed in a similar fashion through an**
 2 **infomercial and was being marketed in the market.**
 3 **However, it was at -- in a higher retail.**

4 Q. So with a product that's innovative,
 5 like Adams Golf product with a different type of
 6 club face, would competition also take away some of
 7 Adams Golf sales if people introduced a similar
 8 club face?

9 **A. Potentially, yes.**

10 Q. And in this instance, Orlimar introduced
 11 a club that was a competitor club to Adams Golf
 12 and, therefore, part of the reasons for Adams
 13 Golf's lower sales were because Orlimar sales were
 14 increasing.

15 Is that fair?

16 MS. FOX: Object to the form.

17 **A. It impacted the market. It impacted the**
 18 **market and was a direct competition to, yes.**

19 Q. MS. REED: Then in part D here:
 20 "Saw Callaway's new fairway woods."

21 Tell me a little bit about

22 Callaway's new fairway woods.

23 **A. Barney, with the introduction of his**
 24 **Tight Lies, caught the market off guard, especially**
 25 **some of the big manufacturers, specifically the**

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1 Callaways.

2 And they rushed to market their new
3 fairway woods to compete with the Adams Tight Lies.

4 Q. Okay. So as of August 19th, 1998, it's
5 fair to say that the obstacles that WDC faced in
6 selling Adams Golf clubs were first Costco; second,
7 the falling Canadian dollar; third, competition
8 from Orlimar; and fourth, competition from
9 Callaway's new fairway woods.

10 Is that fair?

11 MS. FOX: Object to the form.

12 A. I wouldn't know about the order beyond
13 Costco, but these were impacts on the market for
14 sure.

15 EXHIBIT NO. 22 - ONE-PAGE AUGUST
16 28, 1998 FAX - MCK01338

17 Q. MS. REED: I'm now showing you
18 what has been marked as Exhibit 22.

19 MS. FOX: I'm going to object
20 to showing him this exhibit because this is all
21 post-IPO.

22 Callaway has now joined on August
23 28. That means Callaway was not a problem before
24 the IPO. So, therefore, you should not be showing
25 him this.

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1 MS. REED: So is your position
2 that we shouldn't show any documents post-IPO for
3 all depositions?

4 MS. FOX: No, my position is
5 if a document post-IPO discusses a problem that was
6 before the IPO, like Costco -- there are many
7 retrospective documents that say, back then, this
8 was a problem.

9 This one is talking about a problem
10 that doesn't begin until after the IPO.

11 MS. REED: We'll let the
12 document speak for itself and the testimony speak
13 for itself, and your objection is noted.

14 Q. MS. REED: I'm now showing you
15 what has been marked as Exhibit 22. It's Bates
16 stamped MCK1338, and it is a fax from Adams to all
17 distributors

18 Do you recall receiving this fax?

19 A. Yes.

20 Q. And in this fax, Chris Beebe says:
21 "Callaway has now joined the
22 shallow-faced fairway wood battles.
23 With Orlimar already trying to pry
24 away our market share from Adams
25 Golf, we will need to look at how

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1 we react to these challenges."

2 Do you recall that at this point,
3 August 28, 1998, that Callaway had joined the
4 shallow faced fairway wood?

5 A. Yes.

6 Q. And it's safe to say that, in at least
7 as of August, that some decreased sales would be
8 due to competition from Callaway?

9 A. Yes.

10 EXHIBIT NO. 23 - ONE-PAGE NOVEMBER
11 16, 1998 FAX - MCK01505

12 MS. FOX: I'll make the same
13 objection as to this document. It has nothing to
14 do with the pre-IPO situation.

15 MS. REED: We'll be sure to
16 make our objections for anything that's post-IPO
17 for our witnesses.

18 MS. LELAND: I think the point is
19 that discussing problems that came up post-IPO has
20 absolutely nothing to do with what was disclosed in
21 the registration statement of perspective.

22 MS. REED: That is correct, but
23 it has everything to do with damages.

24 Q. MS. REED: I'm showing you
25 what's been marked as Exhibit 23, and it is Bates

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1 stamped MCK1505. And it's from Chris Beebe to Gr
2 Pratt, which is you?

3 A. Yes.

4 Q. And in the middle of that second
5 paragraph, it says -- let's give some context to
6 this.

7 In this instance, Beebe is trying
8 to discuss a voice mail message from last week and,
9 based on my reading of the documents, it's having
10 to do with the bag promotion.

11 Just tell me what your recollection
12 is about your voice message from last week, if you
13 can recall this far back.

14 MS. FOX: I object to the
15 form.

16 A. I don't.

17 Q. MS. REED: Okay. He says in
18 the second paragraph, he says:

19 "It will cost Adams more to settle
20 the Costco problem with bags than
21 with clubs."

22 Do you know what that means?

23 A. I think the gist of the conversation is
24 if maybe to appease our customers, instead of
25 giving them, in the price matching strategy, clubs,

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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC. : CONSOLIDATED
SECURITIES LITIGATION : C.A. NO. 99-371 KAJ
_____ X

ORAL DEPOSITION OF MARCO PUGLIELLI

Wednesday, May 10, 2006

The oral deposition of Marco Puglielli was held at the law offices of Akin Gump Strauss Hauer & Feld, LLP, 1700 Pacific Avenue, Suite 4100, Dallas, Texas, from 9:38 a.m. to 10:54 a.m., before Jamie K. Israelow, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter, Certified Realtime Reporter and Certified LiveNote Reporter.

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MARC PUGLIELLI

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| <p>1 anywhere near the number of clubs sold per year in 2 1998 as Canada? If you don't know -- 3 A I -- based on -- based on -- on 4 our -- of the purchases, I have to say that 5 Japan/UK will have to be very similar to what 6 Canada had. Not denying that Canada was one of 7 our biggest ones from an international standpoint. 8 But international also, for us, was a very small 9 part of our business. If I'm not mistaken, Canada 10 was somewhere around the 2 percent or so of our 11 business, so it's not like it was -- 12 Q And where did you get that figure 13 yourself? 14 A Well, I used to handle numbers too, 15 from the past and still today, so it's something 16 that I'm familiar with it. 17 Q Did you remember it? Did you discuss 18 that with your lawyer before the deposition? 19 A No. Those are numbers that I handle 20 all the time. 21 Q And so you remember that from 1998? 22 A Yes. 23 Q Okay. And -- and it's your 24 impression from 1998 that both England and Japan</p> | <p>1 Costco? This list 2 A Based on this list, no, I'm not -- 3 no. 4 Q This is Exhibit 19. Exhibit 19 is 5 some notes from Chris Beebe. The beginning of it 6 is dated 4/28/98, and this is Adams 9405 through 7 -10, I believe. Through 9410. 8 First of all, have you ever 9 seen these notes before? 10 A No. These are -- I know these are 11 reports that Chris used to write when he would 12 visit countries of distributors around the world. 13 I know this now because when Chris left, all his 14 files were forwarded to me, and that's when I got 15 to see it, but at that time, no, I didn't -- 16 Q He wouldn't have -- he wouldn't have 17 sent that to you? 18 A No. I would not have it, no. 19 Q Okay. Let me ask you this. I guess 20 four lines down, he says: July is usually the 21 largest sales month in Canada. 22 A Where is this? I'm sorry. 23 Q You see where it starts with 24 "market"?</p> |
| Page 19 | Page 21 |
| <p>1 were bigger than Canada as customers? 2 A No, I'm saying they're equally 3 bigger. They were all very similar markets. You 4 asked me if they were the biggest. No, they were 5 not the biggest. We had other markets that were 6 also big too. 7 Q Okay. This has been marked as 8 Exhibit 9. 9 A Thank you. 10 Q Have you seen this document before? 11 A No, ma'am. 12 Q Were you aware of the prices that 13 Costco was selling Canadian clubs at? 14 A I didn't deal with that part, so -- 15 Q Okay. 16 A Like I say, normally I will handle 17 all the shipments, and that was not something that 18 I got into. 19 Q So you wouldn't have known wholesale 20 costs or resale costs, anything like that? 21 A I know today, but not at that time. 22 Chris would not get me involved in those matters. 23 Q And you weren't aware at that point 24 which accounts were affected by the clubs in</p> | <p>1 A Right here? 2 Q Yeah. One, two, three -- 3 A Yes. 4 Q -- the fifth line down. 5 A Yes. 6 Q July is usually the largest sales 7 month in Canada, so we need to prepare for large 8 late-June, early-July shipments to WDC. 9 Do you agree that July was 10 the -- one of the largest months for sales in 11 Canada? 12 A I think we have to understand this, 13 because one thing is sales that a distributor is 14 having in the country, and one thing is purchases 15 from a distributor to a manufacturer. 16 Q Right. 17 A Where those -- you prepare for July, 18 ordering product in June or May -- 19 Q Right. 20 A -- depending on the delivery time 21 that the company does. 22 This is very similar to 23 Europe, where retailers basically have a big 24 month, let's say, in July in sales or in June or</p> |

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| <p>1 so, but they don't -- they will not purchase a lot 2 of product in August or September because that's 3 the -- when the -- the season is almost over. The 4 seasons are very short in Canada, as well as in 5 Europe. 6 So saleswise, it's one thing, 7 which is June, July, May could be very good 8 months, but not purchases, which is a totally 9 different things. Purchases is from the 10 distributor to Adams Golf. 11 So not necessarily are you 12 going to see, let's say, a distributor, either 13 Canada or Europe, making large purchases around 14 July, because then they have to move that product 15 in August because it will get there in August, and 16 retailers are not going to take any inventory at 17 that time because they know new product is going 18 to come, and the season is almost over. 19 Q So what you're saying is: If July is 20 a big month for purchases in Canada, in other 21 words, if they sell a lot to their customers in 22 July -- 23 A Which is -- 24 Q -- therefore, they would have to</p> | <p>1 which eventually ends selling the product to a 2 consumer, end consumer. 3 So sometimes the 4 word "distributor" is mistaken with a retailer, 5 which is not the same thing, because a distributor 6 is handling business for the whole country. A 7 retailer could be a chain or it could be just one 8 store, for that matter, so there's a big 9 difference. 10 Q The -- did Adams Golf sell directly 11 to retailers in the United States? 12 A Yes. 13 Q And were there any distributors in 14 the United States? 15 A No. 16 Q So that no company in the United 17 States should ever be selling to someone else? 18 None of your customers in the United States should 19 ever be reselling those clubs to another person to 20 sell them? 21 A No. That would be called 22 transshipment, I would say. 23 Q Right. 24 A I mean, the -- Adams domestically</p> |
| Page 23 | Page 25 |
| <p>1 order from Adams Golf earlier, May or June? 2 A They will have orders in May, and 3 they will make purchases either May or June. In 4 this case, WDC Mackenzie will try to have a 5 comfortable inventory to face, let's say, June or 6 July, or May in this case. But -- but that's 7 purchases, though. But in July -- 8 Q Purchases from Adams? 9 A May and June. 10 Q Right. 11 A But in July, very rare, or August 12 that a distributor will do any purchases because 13 the season is going to end, and they have enough 14 inventory to carry over for those remaining months 15 that they have for the season. They should. 16 Q When -- using the word "distributor," 17 was that used only for the international sales of 18 Adams Golf? 19 A That's correct. There's a big 20 difference in -- between a distributor and a 21 retailer. We have to understand that distributor 22 is -- it's basically for a manufacturer. As the 23 name says, it distributes -- redistributes -- has 24 a redistribution of the product to retailers,</p> | <p>1 will sell directly to retailers, domestic in the 2 US. And internationally, we sell directly to the 3 distributor, in this case, which is our partner or 4 our eyes in that market, yeah. 5 Q Right at the bottom, you see where it 6 talks about problems? 7 A Yes. 8 Q And then there's the last line: Some 9 discrepancies with shipments, working this out 10 with Marc and Nando, not a major problem. 11 A Uh-huh. 12 Q I assume that refers to you? 13 A That's got to be me because I handle 14 all the shipments, yes. 15 Q And who was Nando? 16 A Nando or Fernando, he used to assist 17 or work in the shipping department. 18 Q Now, did you have anything to do with 19 setting up the plan? If you look on the second 20 page under Costco -- 21 A Yes. 22 Q -- you see where it starts: However, 23 we need to put a plan in place in case this occurs 24 again, as several other major companies, Callaway,</p> |

7 (Pages 22 to 25)

MARC PUGLIELLI

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| <p style="text-align: right;">Page 38</p> <p>1 release, I did.</p> <p>2 Q So you say you saw the press release?</p> <p>3 A Well, when they -- when they made it</p> <p>4 open for everybody, yes. I knew at that time that</p> <p>5 they --</p> <p>6 Q Did you have an understanding of why</p> <p>7 Adams filed an action against Costco?</p> <p>8 A Obviously the product is shown in</p> <p>9 a -- not an authorized dealership, so that's not</p> <p>10 something that went along with our philosophy, how</p> <p>11 to do business, so whenever you see something like</p> <p>12 that, and -- I believe you could take some legal</p> <p>13 action as far as a company like that, so I think</p> <p>14 it's very common, something like that. I know</p> <p>15 other companies have done similar moves like this,</p> <p>16 so --</p> <p>17 Q Do you know what the result of this</p> <p>18 legal action was?</p> <p>19 A I don't know</p> <p>20 Q Did you ever hear anything about it</p> <p>21 after the press release?</p> <p>22 A Did I hear --</p> <p>23 Q Anything about the -- the action</p> <p>24 that --</p> | <p style="text-align: right;">Page 40</p> <p>1 when a product shows in not an authorized</p> <p>2 dealership, that doesn't make sense.</p> <p>3 Q Did you have a list of authorized</p> <p>4 dealerships?</p> <p>5 A For international, I do</p> <p>6 Q But at that time in 1998?</p> <p>7 A International, yes, absolutely.</p> <p>8 Q Was there a national list as well of</p> <p>9 authorized dealerships?</p> <p>10 A For US domestic, I can't respond</p> <p>11 because I never handled that part of the business.</p> <p>12 Q Okay.</p> <p>13 A And I don't want to speculate there</p> <p>14 because I never got mixed in the domestic sales.</p> <p>15 But internationally, yes, I</p> <p>16 can assure you that we had a list, because</p> <p>17 obviously, I used to ship to every one of them, so</p> <p>18 I had to have enough information, detailed</p> <p>19 information of where to ship or how to ship,</p> <p>20 et cetera.</p> <p>21 Q This was Exhibit -- is Exhibit 14.</p> <p>22 Exhibit 14 is an August 19th, 1998 letter or fax</p> <p>23 to Barney Adams from Greg Pratt at Mackenzie.</p> <p>24 Do you remember ever seeing</p> |
| <p style="text-align: right;">Page 39</p> <p>1 A No, I did not.</p> <p>2 Q -- Adams Golf took?</p> <p>3 A Not that I know.</p> <p>4 Q Do you know if it was effective</p> <p>5 against Costco?</p> <p>6 A No, ma'am.</p> <p>7 Q But you understood that it was</p> <p>8 unacceptable for Adams Golf to actually ship to --</p> <p>9 to a company like Costco at that time?</p> <p>10 A Well, we didn't ship to Costco.</p> <p>11 Q That's what I'm asking you.</p> <p>12 A No, we didn't never ship to Costco.</p> <p>13 That was something that -- because I'm a head of</p> <p>14 that, and I know that we never ship to -- you</p> <p>15 know, out of the United States. We always shipped</p> <p>16 to the distributor. Costco was never in the mix,</p> <p>17 so --</p> <p>18 Q Was there a -- go on.</p> <p>19 A So from my standpoint, all of Adams,</p> <p>20 not just me, we were not happy with -- this is</p> <p>21 something that happens, we know that, but -- but</p> <p>22 this is not that we approved at all.</p> <p>23 And in my case, I was along</p> <p>24 those lines. I mean, I don't -- this is not --</p> | <p style="text-align: right;">Page 41</p> <p>1 this document?</p> <p>2 A No, ma'am. No.</p> <p>3 Q Take a look at the third page, where</p> <p>4 it says "Olimar." It says: The Olimar product</p> <p>5 entered the Canadian market when Costco had Adams</p> <p>6 and before the price-matching strategy was</p> <p>7 introduced. The short golf season in Canada finds</p> <p>8 retailers being somewhat fickle. As a result of</p> <p>9 the problems they were facing with Adams' product</p> <p>10 in Costco, not knowing what action was going to be</p> <p>11 taken, they jumped on the Olimar bandwagon.</p> <p>12 You mentioned Olimar before.</p> <p>13 Were you aware that in Canada, because of the</p> <p>14 Costco problem, some of the retailers went to</p> <p>15 Olimar?</p> <p>16 MS. REED: Objection, form.</p> <p>17 Q (By Ms. Fox) Were you aware? You</p> <p>18 can answer.</p> <p>19 A If you allow me, from my standpoint,</p> <p>20 Olimar was a product that came to the market with</p> <p>21 similar features and price as Adams, so it was</p> <p>22 another option, and it was a more known brand name</p> <p>23 than Adams Golf, had more -- it was well-known in</p> <p>24 the industry, Olimar.</p> |

11 (Pages 38 to 41)

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| <p>1 I don't believe it was because 2 of Costco. I believe it was more because they 3 have another option in a more -- golf is a -- 4 consumers make a lot of buying on being loyal to a 5 brand and also because golf is a -- as a golf 6 teacher, as a golf professional, I know it's very 7 psychological, and they basically -- they go for 8 the brand that they feel more confident with. 9 It's just like that. 10 So this was another option in 11 the market, which at that time we were unique, as 12 I said, in the beginning of '98. Middle of '98, 13 other companies started coming up with other 14 products very similar to Adams' at the same price. 15 We knew we had a problem at 16 that time, and Olimar obviously introduced their 17 product in a similar way, in the same strategy 18 that we did, and that obviously affected us. 19 But it was not because of 20 Costco. I don't believe so. 21 Q Now, this says: Olimar retails for 22 399, \$100 above the present Adams retail. 23 A Well, it's -- 24 Q That's not the same price, is it?</p> | <p>1 Q Do you remember -- 2 A Yes, I do. 3 Q -- the meeting in -- in Dallas with 4 people from -- from Mackenzie? 5 A Yes. It's -- yes, I do. 6 Q And what was the purpose of that 7 meeting, if you remember? 8 A Well, basically, the -- internal in 9 Adams, we were considering the possibility of 10 dividing a little bit -- the work from 11 international, because we were only basically -- 12 Chris was handling all the international business, 13 so there was a consideration of giving some of the 14 market set Chris was handling to have me handle it 15 now at that time, and also part of Europe, 16 et cetera. 17 So -- but obviously, Chris was 18 still supervise -- I would still be answering to 19 Chris and he will be looking at everything I was 20 doing. So they were trying to bring me up to date 21 as to what that situation was. 22 Q And so you came down and met with 23 them in -- 24 A I mean, I was in the office, so</p> |
| Page 43 | Page 45 |
| <p>1 A Well, Adams -- you have to remember 2 that Adams now was two years into the market, over 3 two years into the market, and in this case, 4 Olimar, with a new product -- I mean, they were 5 high-priced. They had -- the way they were 6 promoting it, they had a TriMetal technology that 7 was expensive, and consumers have a tendency of 8 thinking that whatever is more expensive is also 9 better. 10 So I could see the price 11 difference, but -- but you have similar -- you 12 have premium brands that are competing against 13 each other, and us, as being a very new company, 14 we needed to have a significant difference in 15 price between one product and the other to be able 16 to succeed; otherwise, there's no way we could 17 survive. 18 I see here there's also new 19 fairway woods from Callaway too. So all these 20 companies are trying to show -- 21 Q Wait. There's no question. 22 A Sorry. 23 Q This is Exhibit 16. 24 A Thank you.</p> | <p>1 it's -- 2 Q Chris's father was sick, he wasn't 3 there. Do you remember that? 4 A Yeah, I remember, because Chris could 5 not make it, so I was there to -- obviously to 6 attend the visit from our distributors. 7 Q Do you remember, without looking at 8 this, but mostly refreshes your recollection, do 9 you actually remember what they had to say about 10 Costco? 11 A I would have to go through this, if 12 you don't mind, just to refresh my memory because 13 it's been so -- so long, but -- and if you could 14 be more specific, I could probably help you out. 15 Q Why don't you just read through it 16 and see, starting where it says: Adams clubs in 17 Costco. 18 A (Witness complies.) 19 Yes. 20 MS. REED: Is there a question 21 pending? 22 Q (By Ms. Fox) I'm sorry. It goes up 23 to -- where it's up to Number 3. 24 A Okay. So what was the question? I'm</p> |

12 (Pages 42 to 45)

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